

**United States Department of Labor
Employees' Compensation Appeals Board**

C.V., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Montrose, NY, Employer**

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**Docket No. 18-1106
Issued: March 20, 2019**

Appearances:

*Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 8, 2018 appellant, through counsel, filed a timely appeal from an April 11, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the April 11, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions of concussion, headaches, migraines, and post-traumatic stress disorder (PTSD) as causally related to the accepted March 2, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish total disability for the period commencing April 20, 2017, causally related to the accepted March 2, 2017 employment injury.

FACTUAL HISTORY

On March 7, 2017 appellant, then a 54-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 2, 2017 she sustained pain and swelling of the right temple after she was struck by an agitated patient. She stopped work the same day and has not returned. On April 18, 2017 OWCP accepted the claim for head/facial contusion.

On March 6, 2017 appellant was seen by Dr. Rajneesh Uppal, a treating Board-certified internist, for complaints of right temple side headaches after being punched in the right temple on March 2, 2017.⁴ Since the March 2, 2017 employment injury, she reported an increase in migraines, difficulty sleeping, and mild dizziness. Dr. Uppal diagnosed head injury, concussion without loss of consciousness, and migraine.

The employing establishment, on March 6, 2017, completed an authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, attending physician's report, Dr. Uppal noted appellant's employment incident and diagnosed a concussion on March 15, 2017. She checked a box marked "yes" to the question of whether the diagnosed conditions were caused or aggravated by the described employment incident.

In a report dated March 16, 2017, Dr. Uppal diagnosed concussion due to the injury and continued headaches. She referred appellant for a computerized tomography (CT) scan and indicated that appellant was disabled from work due to the concussion.

On March 27, 2017 Dr. Uppal reported that appellant could return to work with no restrictions on April 10, 2017. In an April 6, 2017 note, she related that, due to the severity and increased frequency of appellant's migraines, she would be unable to return to work until May 4, 2017.

On April 24, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for the period April 20 to 24, 2017.

On May 1, 2017 appellant was seen by Dr. Paul Magda, a Board-certified neurologist and neuromuscular medicine physician, for headaches. Dr. Magda described appellant's March 2, 2017 employment injury and her medical history, which included a history of migraines since 2003. He related appellant's explanation that her current migraines were different from her prior migraines, which she related had been caused by work stress and lasted one-half hour with treatment. According to appellant the medication she previously took for her migraine headaches had no effect on her current migraine headaches. She also related having sleep difficulties, nausea,

⁴ The report noted the year as 2016, which appears to be a typographical error.

dizziness, neck pain, and bilateral shoulder pain since the employment injury. Dr. Magda conducted physical and mental examinations and diagnosed post-traumatic intractable migraine without aura.

In an addendum dated May 1, 2017, Dr. Magda noted that appellant requested that she be given a medical leave of absence due to her severe headaches, neck/shoulder pain, and dizziness until her next appointment. In disability notes dated May 1 and 4, 2017, he indicated that appellant would be disabled until August 7, 2017 due to her neurological conditions.

By development letter dated May 8, 2017, OWCP advised appellant of the type of medical evidence needed to expand acceptance of her claim to include additional conditions. It afforded her 30 days to provide the requested information.

On May 18, 2017 OWCP received an April 20, 2017 report from Dr. Uppal diagnosing migraine without aura, head trauma with concussion, and increased severity and frequency of headaches.

Dr. Magda, in a second addendum dated May 17, 2017, noted that appellant required a medical leave of absence due to her severe headaches, neck/shoulder pain, and dizziness following her assault.

The record contains a progress note for the period August 2 to September 20, 2017 and an October 2, 2017 narrative report from Joanne L. Rubin, Ph.D., a treating clinical psychologist, who diagnosed PTSD due to the March 2, 2017 physical assault by a patient.

Dr. Magda, in reports dated August 22 and September 14, 2017, again provided diagnoses of intractable chronic post-traumatic headache and post-traumatic neck and shoulder pain.

By decision dated October 3, 2017, OWCP denied appellant's request to expand acceptance of her claim to include the additional conditions of concussion, intractable headaches, migraines, and PTSD. It found that she had failed to submit a rationalized medical opinion explaining how the diagnosed conditions had been caused or aggravated by the accepted March 2, 2017 employment injury.

By decision dated October 4, 2017, OWCP denied appellant's claim for wage-loss compensation for the period April 20, 2017 and continuing as she had not established that her disability was causally related to her accepted head/facial contusion.

On October 25, 2017 and January 14, 2018 appellant, through counsel, requested reconsideration of the denial of expansion of acceptance of her claim and denial of wage-loss compensation.

Dr. Rubin, in reports dated September 14 and October 2, 2017, diagnosed PTSD which she attributed to appellant's being assaulted by a patient on March 2, 2017. She noted that the patients at the employing establishment were combat veterans and knew how to inflict harm. Appellant related being beaten with fists on her head and chest by an agitated patient. Since the March 2, 2017 assault appellant related having violent nightmares, recurrent flashbacks, and night terrors of screaming in her sleep, and prolonged and severe migraines. Dr. Rubin discussed treatment provided to help her deal with the stresses from the assault, her job demands, and the economic consequences from OWCP's denial of wage-loss compensation.

By decision dated April 11, 2018, OWCP found the medical evidence of record was insufficient to establish causal relationship between the March 2, 2017 employment injury and the conditions of concussion, migraines, intractable headaches, and PTSD. It further found that appellant had not met her burden of proof to establish that she was disabled for the period April 20, 2017 and continuing, causally related to her accepted conditions of head/facial contusion.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.⁶

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions of concussion, intractable headaches, migraines, and PTSD as causally related to her accepted March 2, 2017 employment injury.

In reports dated March 16 and April 6, 2017, Dr. Uppal noted diagnoses of a head injury and concussion, which she attributed to the accepted March 2, 2017 work injury. While she provided an affirmative opinion which supported causal relationship, she did not offer a rationalized medical explanation to support her opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ The record

⁵ See *S.S.*, Docket No. 18-0081 (issued August 22, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *C.F.*, Docket No. 18-1156 (issued January 22, 2019); see *M.W.*, 57 ECAB 710 (2006).

⁷ See *G.C.*, Docket No. 18-0506 (issued August 15, 2018); *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

⁸ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); see also *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

⁹ *L.A.*, Docket No. 17-0842 (issued May 16, 2018).

¹⁰ *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

also contains an attending physician's report, Form CA-16, in which Dr. Uppal diagnosed head injury and concussion and checked a box marked "yes" indicating that the conditions were caused or aggravated by the accepted employment incident. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹¹

Similarly, while Dr. Rubin diagnosed PTSD, she merely concluded that this condition was due to the March 2, 2017 employment injury. She did not explain how a single altercation impacted over time could cause PTSD. The Board has frequently explained that conclusory medical opinions, are entitled to little probative weight and are insufficient to support a causal relationship claim.¹²

The remaining medical reports, including those of Dr. Magda, are of limited probative value as to whether acceptance of the claim should be expanded as they do not specifically address the cause of the additional diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ Thus, these reports are insufficient to meet appellant's burden of proof.

On appeal counsel asserts that Dr. Rubin's report is sufficient to establish that the acceptance of appellant's claim should be expanded. Contrary to counsel's contention, Dr. Rubin's opinion is insufficiently rationalized to establish that appellant's diagnosed PTSD was caused or aggravated by the accepted March 2, 2017 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁴ Whether a particular injury causes an employee to become disabled from work, and the duration of the disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁵

¹¹ See *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹² See *supra* note 10; *Claudio Vazquez*, Docket No. 02-1134 (issued March 21, 2003).

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *V.G.*, Docket No. 18-0936 (issued February 6, 2019).

¹⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁶ When the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹⁷

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that she was disabled from work for the period commencing April 20, 2017 and continuing, causally related to her accepted March 2, 2017 employment injury.

In support of her claim appellant submitted medical reports from Dr. Uppal, Dr. Magda, and Dr. Rubin. The only report addressing the specific period of disability at issue is an April 6, 2017 note from Dr. Uppal, which indicated that appellant was disabled from work until May 6, 2017. Dr. Uppal provided no explanation to support this period of disability. A rationalized explanation was particularly necessary since she had, in a March 27, 2017 progress note, released appellant to return to work with no restrictions as of April 10, 2017. No objective findings or other explanation was provided as to why appellant was unable to perform her employment duties, due to the accepted condition of head/facial contusion. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the opinion is of diminished probative value.¹⁹ Thus, the Board finds Dr. Uppal's report of limited probative value and insufficient to establish the claim for total disability for the period alleged.

The remainder of the medical opinion evidence, including reports from Dr. Magda and Dr. Rubin, does not specifically address dates of disability or provide medical rationale explaining why appellant was disabled causally related to her accepted March 2, 2017 employment injury. As previously noted Dr. Magda and Dr. Rubin addressed conditions which were not accepted as causally related to the March 2, 2017 employment injury. Without a medical explanation, supported by objective findings, explaining why appellant was disabled on specific dates due to the accepted employment injury, appellant would be self-certifying disability.²⁰

Appellant has not met her burden of proof to establish the claimed period of disability as she has not submitted medical evidence containing a rationalized medical opinion that she was

¹⁶ *S.M.*, 58 ECAB 166 (2008); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

¹⁷ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also K.A.*, Docket No. 17-1718 (issued February 12, 2018).

¹⁹ *L.W.*, Docket No. 17-1685 (issued October 9, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

²⁰ *See supra* note 18.

totally disabled for the period commencing April 20, 2017 and continuing, causally related to her accepted March 2, 2017 employment injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that acceptance of her claim should be expanded to include additional conditions of concussion, intractable headaches, migraines, and PTSD as causally related to her accepted March 2, 2017 employment injury. The Board further finds that appellant has not established total disability for the period commencing April 20, 2017, causally related to her accepted March 2, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.²¹

Issued: March 20, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²¹ Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).